

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

UNITED STATES OF AMERICA and
THE STATE OF WISCONSIN,

Plaintiffs,

v.

NCR CORPORATION, *et al.*,

Defendants.

Civil Action No. 10-C-910

Hon. William C. Griesbach

**STIPULATION AND PROPOSED ORDER REGARDING EXHIBITS
FOR THE DECEMBER 2012 TRIAL**

Plaintiffs the United States of America and the State of Wisconsin (collectively, “Plaintiffs”), and Defendants NCR Corporation (“NCR”), the Georgia-Pacific Defendants (“GP”),¹ P.H. Glatfelter Company (“Glatfelter”), WTM I Company (“WTM I”), CBC Coating, Inc. (“CBC”), U.S. Paper Mills Corp. (“U.S. Paper”), and Menasha Corporation (“Menasha”) (collectively, “Defendants”), by and through their respective counsel, submit this Stipulation and Proposed Order Regarding the Exhibits for the December 2012 Trial.

IT IS HEREBY STIPULATED among Plaintiffs and Defendants:

1. Dkt. No. 716 is a combined exhibit list for the trial that took place in Milwaukee, Wisconsin in the above-captioned case in December 2012 (the “Exhibit List”).

2. Plaintiffs and Defendants disagree about whether the Exhibits that comprise the Administrative Record— Exhibits 1 through 1376—have already been stipulated as admitted into evidence for all purposes. Plaintiffs contend that the Parties agreed that the entire Administrative Record was stipulated as admissible for all purposes, as confirmed in prior case filings (Dkt. 707; Dkt 706-1) and in statements made on the record at trial (Tr. 2116-19; Tr.

¹ “GP” refers to Defendants Georgia-Pacific Consumer Products LP (f/k/a Fort James Operating Company).

2809-10). Defendants disagree because the Court's Pretrial Order reflects the Parties' agreement that "the [Administrative Record] Documents are admissible for purposes of adjudicating whether the selection of the response action required by the UAO was arbitrary, capricious or otherwise not in accordance with law" (the "Remedy Challenge"), and that the Parties reserved their right to object if an Administrative Record Exhibit was offered for any other purpose. (Dkt. 610 at 7). The Parties agree to address their positions on this dispute in post-trial briefing following the procedures set forth herein.

3. All Exhibits ranging from Exhibits 2000 through 9980 that have been placed on the Exhibit List without an objection reserved are admitted into evidence for all purposes, subject to a relevancy objection that may be raised and substantiated during the post-trial briefing.

4. All Exhibits that have been placed on the Exhibit List but marked "Demonstrative" or "For Identification Only" are offered for demonstrative or illustrative purposes only. Parties reserve the right to argue that an Exhibit marked "Demonstrative" or "For Identification Only" should be admitted into evidence for substantive, rather than illustrative, purposes. This argument and any objections thereto must be raised, if at all, in post-trial briefing following the procedures set forth herein.

5. Each Exhibit that has been placed on the Exhibit List with an objection listed and reserved will be admitted into evidence for all purposes unless an objecting party states and substantiates its reserved objections to that Exhibit in post-trial briefing following the procedures set forth herein and the Court rules that the Exhibit is inadmissible or is admissible only for a limited purpose. For all Exhibits other than Exhibits 1 to 1376, only relevance objections and objections listed and reserved in the Exhibit List can be raised in post-trial briefing. Exhibits 1 to 1376 will be admitted for purposes of the Remedy Challenge. In addition, any Exhibit from 1 to 1376 which any Party wishes to use as evidence for any other purpose must be individually cited as support for an individual finding of fact. All other Parties retain the right to object to the admission of any such Exhibit, other than for purposes of the Remedy Challenge, including any objection or argument that could have been raised at trial had the Exhibit been offered in evidence at trial. All such objections must be stated and substantiated in post-trial briefing following the procedures set forth herein. Any such Exhibit will be admitted into evidence for all purposes unless the Court rules that the exhibit is inadmissible or is admissible only for a limited purpose.

6. The Parties agree to the following procedure for briefing any admissibility objections:

- a. On Monday, February 4, 2013, the Parties will file proposed findings of fact and conclusions of law. Dkt. 679 at 23.
- b. On Tuesday, February 19, 2013, each Party will file a brief stating and substantiating its objections to the admission of any Administrative Record Exhibit cited in a Party's February 4, 2013 filing and its reserved objections to the admission of any other Exhibit. If an Administrative Record Exhibit or any other Exhibit is cited in a Party's February 4, 2013 filing, any objections to those Exhibits not stated and substantiated in the February 19, 2013 briefs are deemed

waived, unless the Exhibit is subsequently cited for a purpose unrelated to the initial citation. The page limits for the February 19, 2013 filing shall be as follows: Plaintiffs: 15 pages; NCR: 15 pages; all other stipulating Defendants (the "Other Defendants"): 5 pages each.²

- c. On Friday, March 1, 2013, the Parties will file Responses to other Parties' proposed findings of fact and conclusions of law. On the same date, Parties shall also address (either in the Response or in a separate brief) any admissibility objections raised by another Party in the briefs filed on Tuesday, February 19, 2013. The page limits for the March 1, 2013 Responses to the Exhibit objections shall be as follows: Plaintiffs: 30 pages; NCR: 30 pages; the Other Defendants: 5 pages each.
- d. On Wednesday, March 6, 2013, each Party will file a brief stating and substantiating its objections to the admission of any Administrative Record Exhibits cited in a Party's March 1, 2013 filing and its reserved objections to the admission of any other Exhibit. If an Administrative Record Exhibit or any other Exhibit is cited in a Party's March 1, 2013 filing, any objections to those Exhibits not stated and substantiated in the March 6, 2013 briefs are deemed waived. The page limits for the March 6, 2013 filings shall be as follows: Plaintiffs: 15 pages; NCR: 15 pages; the Other Defendants: 5 pages each.
- e. On Tuesday, March 12, 2013, the Parties will file Responses to any admissibility objections raised by another Party in the briefs filed on Wednesday, March 6, 2013. The page limits for the March 12, 2013 Responses to the Exhibit Objections shall be as follows: Plaintiffs: 30 pages; NCR: 30 pages; the Other Defendants: 5 pages each.

IT IS SO ORDERED.

Dated this _____ day of January 2013.

William C. Griesbach, Chief Judge
U.S. District Court - WIED

² For any of the briefs related to Exhibit objections or responses thereto, any of the Other Defendants may cede some of their pages to another Other Defendant.

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